

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENDRICK VALYN BOWENS,

Defendant-Appellant.

UNPUBLISHED
September 9, 2008

No. 277387
Saginaw Circuit Court
LC No. 06-028109-FH

Before: Donofrio, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

A jury convicted defendant of resisting and obstructing a police officer, MCL 750.81d, felon in possession of a firearm, MCL 750.224, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 5 to 15 years for resisting and obstructing a police officer and 46 months to 8 years for felon in possession of a firearm, and to a consecutive two-year prison term for felony-firearm. Defendant appeals as of right. We affirm.

Defendant argues that the evidence presented was insufficient to support the convictions of felon in possession of a firearm and felony-firearm. When reviewing a claim for sufficiency of the evidence, all evidence is viewed in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Conflicting evidence must be resolved in favor of the prosecution. *Id.* “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Under the felony-firearm statute, MCL 750.227b(1), “A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony . . . is guilty of a felony . . .” Under the felon in possession of a firearm statute, MCL 750.224f, unless certain exceptions apply, “a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm.” Michigan courts have held that “possession” includes both actual and constructive possession. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Possession is a question of fact for the fact-finder and can be established by circumstantial evidence. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000).

Constructive possession of a firearm is found if the location of the weapon is known and it is reasonably accessible to the defendant. *Id.* at 438. See also *Hill, supra* at 471.

Defendant argues that there was insufficient evidence presented to establish that he possessed the gun found in the van. We disagree. After receiving complaints of gunfire possibly involving a maroon van, police officers investigated a maroon van containing one driver and three passengers. Defendant was sitting in the front passenger seat. As officer Mark Scott approached the van, defendant did not comply with the officer's requests to keep his hands raised. Instead, defendant put his hands down three or four times. When defendant moved his hands down, Scott was unable to see defendant's hands. The other occupants of the van kept their hands where Scott could observe them. Defendant also stepped outside of the vehicle before being asked to do so and fled the scene as Scott was attempting to handcuff him. Officers later found the firearm under the front passenger seat where defendant had been sitting. The handle of the gun was facing forward and lying on top of "debris."

Viewed in a light most favorable to the prosecution, this evidence was sufficient to allow a rational trier of fact to find that defendant constructively possessed the gun found in the maroon van. Defendant was seated directly above the gun. Scott was able to view the hands of all the persons inside the vehicle with the exception of defendant, who moved them up and down several times. The gun was lying on top of debris on the floor, which suggests that it had been placed there recently. Further, the handle of the gun was facing forward, not only making it more accessible to defendant than the others in the vehicle as a weapon for immediate firing, but also suggesting that it was placed on top of the debris by someone sitting in the front seat of the car.

Defendant also argues that he is entitled to resentencing on the resisting and obstructing conviction *if* his convictions on the firearm offenses are reversed because the presentence investigation report was prepared based on defendant's most serious crime of felon in possession of a firearm pursuant to MCL 771.14(2)(e)(iii). In light of our conclusion that the evidence was sufficient to support the firearm offenses, we need not address this issue.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald